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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

IN RE K-DUR ANTITRUST LITIGATION

:
: **Civil Action Nos. 01-CV-1652 (JAG)**

This document relates to:

:
: **MDL Docket No. 1419**

All Actions

:
: **ORAL ARGUMENT REQUESTED**

**NOTICE OF OBJECTIONS TO THE FEBRUARY 6, 2009 AMENDED
REPORT AND RECOMMENDATION OF THE SPECIAL MASTER
ON THE PARTIES' SUMMARY JUDGMENT MOTIONS**

TO: ALL PARTIES AND THEIR ATTORNEYS OF RECORD

PLEASE TAKE NOTICE that on such date as may be set by the Court, the Direct Purchaser Plaintiffs shall move before The Honorable Joseph A. Greenaway, Jr., U.S.D.J., United States District Court for the District of New Jersey, at the Martin Luther King, Jr. Federal Building and U.S. Courthouse, 50 Walnut Street, Newark, New Jersey, for an Order vacating and reversing the February 6, 2009 Amended Report and Recommendation of the Special Master.

Specifically, Direct Purchaser Plaintiffs object to, and seek reversal of, the Special Master's recommendation granting Defendants' motions for summary judgment and denying Plaintiffs' motions for partial summary judgment on the following grounds:

(1) The Special Master adopted a framework for the consideration of exclusion payments in Hatch-Waxman settlements that improperly reconciles the policies of the antitrust and patent laws and will encourage the proliferation of anticompetitive exclusion payments.

(2) The Special Master's refusal to consider the undisputed evidence that the June 17, 1997 Agreement between Defendants Schering-Plough and Upsher Smith was outside the scope of Schering's patent is unprecedented and contrary to every other case to have considered exclusion payments.

(3) The Special Master's dismissal of Plaintiffs' claim that Schering's patent litigation was objectively baseless was contrary to law and improperly resolved disputed issues of fact.

PLEASE TAKE FURTHER NOTICE that in support of this application, Plaintiffs rely upon the Memorandum of Law filed and served herewith.

A proposed form of Order is submitted herewith.

Dated: March 20, 2009

Respectfully submitted,

/s Barry L. Refsin

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